

OFFICE OF THE FEDERAL DEFENDER

EASTERN DISTRICT OF CALIFORNIA

801 I STREET, 3rd FLOOR

SACRAMENTO, CALIFORNIA 95814

(916) 498-5700 Fax: (916) 498-5710

*Daniel J. Broderick
Federal Defender*

*Linda Harter
Chief Assistant Defender*

July 17, 2008

FILED

JUL 17 2008

**CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**
BY _____
DEPUTY CLERK

Mr. J. Edward Jones
Attorney at Law
1215 K Street, 17th Floor
Sacramento, CA 95814

Re: **Earnest S. Harris v. Warden**
Civ.S-04-1906-FCD

Dear Mr. Jones:

This will confirm your appointment as counsel by the Honorable Kimberly J. Mueller, U.S. Magistrate Judge, to represent the above-named client. You are attorney of record until such time as you are relieved or other action is taken to appoint a different attorney.

Enclosed is CJA 20 form, your Order of Appointment and Voucher for services rendered. Also enclosed is an instruction sheet discussing the use of the forms.

If we may be of any further assistance regarding the processing of the enclosed form, preparation of form CJA 21 for expert services, or in reference to any other matter pertaining to this case, please feel free to call upon us at any time.

Very truly yours,



CYNTHIA L. COMPTON
Operations Administrator

:clc
Enclosures

cc: Clerk's Office
Ninth Circuit Court of Appeals

| | | | | | |
|--|--|--|--|--|--|
| 1. CIR./DIST./DIV. CODE CAE | | 2. PERSON REPRESENTED Harris, Earnest S. | | VOUCHER NUMBER | |
| 3. MAG. DKT./DEF. NUMBER | | 4. DIST. DKT./DEF. NUMBER 2:04-001904-001 | | 5. APPEALS DKT./DEF. NUMBER | |
| 7. IN CASE/MATTER OF (Case Name) Earnest Harris v. Warden | | 8. PAYMENT CATEGORY Other | | 9. TYPE PERSON REPRESENTED Appellant | |
| | | | | 10. REPRESENTATION TYPE (See Instructions) Habeas Appeal | |
| 11. OFFENSE(S) CHARGED (Cite U.S. Code, Title & Section) If more than one offense, list (up to five) major offenses charged, according to severity of offense. | | | | | |
| 12. ATTORNEY'S NAME (First Name, M.I., Last Name, including any suffix) AND MAILING ADDRESS Jones, J. Edward 1215 K Street 17th Floor Sacramento CA 95814 Telephone Number: (916) 503-1792 | | | 13. COURT ORDER <input checked="" type="checkbox"/> O Appointing Counsel <input type="checkbox"/> C Co-Counsel <input type="checkbox"/> F Subs For Federal Defender <input type="checkbox"/> R Subs For Retained Attorney <input type="checkbox"/> P Subs For Panel Attorney <input type="checkbox"/> Y Standby Counsel Prior Attorney's Name: _____ Appointment Date: _____ <input type="checkbox"/> Because the above-named person represented has testified under oath or has otherwise satisfied this court that he or she (1) is financially unable to employ counsel and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney whose name appears in Item 12 is appointed to represent this person in this case, or <input type="checkbox"/> Other (See Instructions) Signature of Presiding Judicial Officer or By Order of the Court: _____ Date of Order: 06/19/2008 Repayment or partial repayment ordered from the person represented for this service at time of appointment. <input type="checkbox"/> YES <input type="checkbox"/> NO | | |
| 14. NAME AND MAILING ADDRESS OF LAW FIRM (only provide per instructions) | | | | | |

| CLAIM FOR SERVICES AND EXPENSES | | | FOR COURT USE ONLY | | |
|---|------------------------|----------------------|---|------------------------------|----------------------|
| CATEGORIES (Attach itemization of services with dates) | HOURS CLAIMED | TOTAL AMOUNT CLAIMED | MATH/TECH ADJUSTED HOURS | MATH/TECH ADJUSTED AMOUNT | ADDITIONAL REVIEW |
| 15. a. Arraignment and/or Plea | | | | | |
| b. Bail and Detention Hearings | | | | | |
| c. Motion Hearings | | | | | |
| d. Trial | | | | | |
| e. Sentencing Hearings | | | | | |
| f. Revocation Hearings | | | | | |
| g. Appeals Court | | | | | |
| h. Other (Specify on additional sheets) | | | | | |
| (Rate per hour = \$ 100.00) TOTALS: | | | | | |
| 16. a. Interviews and Conferences | | | | | |
| b. Obtaining and reviewing records | | | | | |
| c. Legal research and brief writing | | | | | |
| d. Travel time | | | | | |
| e. Investigative and Other work (Specify on additional sheets) | | | | | |
| (Rate per hour = \$100.00) TOTALS: | | | | | |
| 17. Travel Expenses (lodging, parking, meals, mileage, etc.) | | | | | |
| 18. Other Expenses (other than expert, transcripts, etc.) | | | | | |
| GRAND TOTALS (CLAIMED AND ADJUSTED): | | | | | |
| 19. CERTIFICATION OF ATTORNEY/PAYEE FOR THE PERIOD OF SERVICE FROM _____ TO _____ | | | 20. APPOINTMENT TERMINATION DATE IF OTHER THAN CASE COMPLETION | | 21. CASE DISPOSITION |
| 22. CLAIM STATUS <input type="checkbox"/> Final Payment <input type="checkbox"/> Interim Payment Number _____ <input type="checkbox"/> Supplemental Payment Have you previously applied to the court for compensation and/or reimbursement for this case? <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, were you paid? <input type="checkbox"/> YES <input type="checkbox"/> NO Other than from the court, have you, or to your knowledge has anyone else, received payment (compensation or anything of value) from any other source in connection with this representation? <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, give details on additional sheets. I swear or affirm the truth or correctness of the above statements. Signature of Attorney: _____ Date: _____ | | | | | |
| APPROVED FOR PAYMENT - COURT USE ONLY | | | | | |
| 23. IN COURT COMP. | 24. OUT OF COURT COMP. | 25. TRAVEL EXPENSES | 26. OTHER EXPENSES | 27. TOTAL AMT. APPR / CERT | |
| 28. SIGNATURE OF THE PRESIDING JUDICIAL OFFICER | | | DATE | 28a. JUDGE / MAG. JUDGE CODE | |
| 29. IN COURT COMP. | 30. OUT OF COURT COMP. | 31. TRAVEL EXPENSES | 32. OTHER EXPENSES | 33. TOTAL AMT. APPROVED | |
| 34. SIGNATURE OF CHIEF JUDGE, COURT OF APPEALS (OR DELEGATE) Payment approved in excess of the statutory threshold amount. | | | DATE | 34a. JUDGE CODE | |

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUN 16 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

EARNEST S. HARRIS,

Petitioner - Appellant,

v.

JERRY BROWN,

Respondent - Appellee.

No. 08-15718

D.C. No. 04-CV-01906-FCD
Eastern District of California,
Sacramento

ORDER

Before: BERZON and N.R. SMITH, Circuit Judges.

The request for a certificate of appealability is granted with respect to the following issues: (1) whether appellant was denied due process at his plea hearing when the State presented an abstract of judgment incorrectly stating that appellant had suffered a prior conviction for assault with the intent to commit rape, including whether this misinformation rendered appellant's plea involuntary; (2) whether appellant was denied due process when the resentencing court enhanced his sentence based on a prior conviction for assault with intent to commit oral copulation, which was not a statutorily-defined "serious felony" at the time appellant entered his guilty plea; and (3) whether appellant has adequately raised

these claims as federal constitutional issues in his 28 U.S.C. § 2254 proceedings.

See 28 U.S.C. § 2253(c)(3); *see also* 9th Cir. R. 22-1(e).

Appellant's motion for in forma pauperis status is granted. The Clerk shall change the docket to reflect appellant's in forma pauperis status.

Appointment of counsel is granted sua sponte. Counsel will be appointed by separate order. If appellant does not wish to have appointed counsel, appellant shall file a motion asking to proceed pro se within 21 days of the date of this order.

The Clerk shall serve a copy of this order on Daniel Broderick, Federal Public Defender, 801 I Street, 3rd Floor, Sacramento, California 95814, who will locate appointed counsel. The district court shall provide the Clerk of this court with the name and address of appointed counsel by facsimile transmission (FAX: (415) 355-8111) within 14 days of locating counsel.

The opening brief is due September 15, 2008; the answering brief is due October 15, 2008; the optional reply brief is due within 14 days after service of the answering brief.